IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77–1337

UNIVERSITY OF NEVADA, and the
STATE OF NEVADA,

Petitioners,

v.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem JOHN C. HALL and PATRICIA HALL,

Respondents.

BRIEF OF PETITIONER

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT DIVISION FOUR

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OPINION BELOW

The Writ of Certiorari is addressed to the California Court of Appeal, First Appellate District, Division Four, to review the opinion of that Court which, is reported as 74 Cal. App. 3rd 280 (1977) and is set forth in full in the Appendix to the Petition for Certiorari.

JURISDICTION

The judgment of the Court of Appeal

of the State of California was entered on October 24, 1977. A Petition for Hearing in the California Supreme Court to review the judgment of the Court of Appeal was timely filed pursuant to the California Rules of Court. The Petition for Hearing was denied on December 22, 1977. A Petition for Certiorari was filed on March 22, 1978, invoking this Court's jurisdiction under 28 U.S.C. §1257(3). Certiorari was granted on May 30, 1978.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article IV, Section 1.

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Constitution, Amendment X:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

United States Constitution, Amendment XI:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Nevada Revised Statute 13.025, enacted as Statutes of Nevada, 1967, p.720, repealed by Statutes of Nevada, 1969, p.67:

> "(1) Except as provided in subsection 2, any action or proceeding against the State of Nevada shall be brought in a court of competent jurisdiction in Ormsby County.
>
> (2) Any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the injury

occurred."

Nevada Revised Statutes 41.031, found in official edition, Statutes of Nevada, 1965, p.1413, as amended by Statutes of Nevada, 1975, 209, 421 and Statutes of Nevada 1977, 275:

> "1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to

41.036, inclusive.

> 2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state.
>
> 3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States."

Nevada Revised Statutes 41.035(1) as it existed in 1968, found in official edition, Statutes of Nevada 1965, p.1414, [later amended by Statutes of Nevada 1968, p.44, Statutes of Nevada 1973, 1532, and Statutes of Nevada 1977, 985, 1539]:

> "1. No award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of $25,000 to or for the benefit of any claimant.

No such award may include any amount as exemplary or punitive damages or as interest prior to judgment. [Subsequent amendments extended personal immunity to legislators, officials and employees engaged in official duties and activities, and increased the liability limit to $35,000.]

QUESTIONS PRESENTED FOR REVIEW

Whether unconsenting states are subject to tort actions by individuals in the courts of sister states.

Whether performing governmental functions outside a state's border strips a state of sovereignty for purposes of the sovereign immunity doctrine.

Whether the states have consented to be subject to tort actions in the courts of sister states when they send employees into such sister states to perform governmental functions.

Whether, when a state statutorily consents to suit, and the courts of a sister state obtain jurisdiction thereby, the courts of the sister state are required to recognize and apply any limitations on liability contained in the statutory consent.

STATEMENT OF THE CASE

On May 13, 1968, an employee of the University of Nevada Reno, a governmental arm of the State of Nevada, was involved in a motor vehicle accident in Placer County, California. The employee's presence in the State of California was related to the educational activities of the University of Nevada. It was conceded that at the time of the accident the employee was engaged in official University business and the fact of his agency is not disputed.

As a result of the motor vehicle accident a complaint for money damages was filed by respondents in the Superior Court for the County of San Francisco, State of California, on May 12, 1969 (R.97). Petitioners' successfully quashed service of process and respondents appealed to the District Court of Appeal for the State of California and subsequently to the California Supreme Court (R.113, 133). The California Supreme Court, in a decision reported as *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363 105 Cal. Rptr. 355 (1972) cert. denied 414 U.S. 820 (1973), reversed the lower court's decision and remanded the case to the trial court (R.147, A. to Pet. for Cert. p.x). In reversing, the California Supreme Court specifically held that Sister States were possessed of no immunity when engaged in governmental activities in California.

At the trial petitioners moved for an order limiting the amount of damages

to the statutory limitation on liability set forth in Section 41.035(1) of the Nevada Revised Statutes (R.156). Petitioners also requested a jury instruction restricting the amount of damages to Nevada's statutory limitation (R.85). Petitioners' requests, which were based upon Article 4, Section 1 of the United States Constitution, were denied. At the conclusion of trial respondents were awarded damages in the amount of One Million One Hundred Fifty Thousand Dollars ($1,150,000) (R.90,91).

An appeal from the Money Judgment was timely filed with the Court of Appeal of the State of California, First Appellate District, Division Four. The California Court of Appeal upheld the trial judgment; the California Supreme Court denied petitioners' request for hearing, thereby refusing to review the correctness of the Court of Appeal opinion. Certiorari was then petitioned for and granted.

SUMMARY OF ARGUMENT

The principle that a state may not be sued in any court without its consent is firmly established. It is likewise axiomatic that adoption of the Constitution affected the states' immunity from unconsenting suit only with respect to the consent expressly granted and the power specifically extended to the Federal government. The power to be free from tort actions in the courts of sister states was not a power surrendered in the Constitution and was thus reserved to the States.

The conclusion of the California Court of Appeal that sister states were not immune from suit in California was patently erroneous. The States enjoyed such necessary immunity at the time the Union was formed and that immunity was reserved to the States by the Tenth Amendment to the Constitution. Nor may a state apply the Law of Nations and determine to abrogate the immunity of sister states. Such a proposition is prohibited by the unifying character of the Full Faith and Credit Clause.

If the courts of California were indeed possessed of jurisdiction over the State of Nevada, such jurisdiction could only exist pursuant to Nevada's statutory waiver of sovereign immunity. When consent to suit is granted a state may place such conditions and limitations on that consent as she sees fit. Nevada's consent was limited to the courts of Nevada and the exercise of jurisdiction by the California courts was thus erroneous. However, even if jurisdiction did exist, such jurisdiction was limited by the limitation on liability in Nevada's statutory waiver and the California courts erred in not applying such limitation as they were mandated to do by the requirements of Full Faith and Credit.

ARGUMENT AND CITATION OF AUTHORITY

I. A STATE MAY NOT BE SUED WITHOUT HER CONSENT.

The California Court of Appeal,

following the decision of the California Supreme Court in *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2d 1363, (1972) cert. denied 414 U.S. 820 (1973), held that the State of Nevada was not immune from suit in California courts. The court *did not* hold that Nevada had waived sovereign immunity or had given its implied consent to be sued in California but rather that "Nevada's sovereign protection does not extend beyond its borders". Such a conclusion is diametrically opposed to all established legal principle and precedent.

It is an established principle of jurisprudence that a sovereign cannot be sued in any court without its permission. *Beers v. Arkansas*, 61 U.S. 527, 529 (1857). This principle has full applicability with respect to the States of the Union. *Hans v. Louisiana*, 134 U.S. 1, 15 (1890). In the words of this Court:

> "It may be accepted as a point of departure, unquestioned, that neither a state, nor the United States can be sued as defendant in any court in this Country without their consent, except in that limited class of cases in which a state may be made a party by virtue of the original jurisdiction conferred on that court by the Constitution." *Cunningham v. Macon & B. R. Co.*, 109

U.S. 446, 451 (1883).

The holding of *Cunningham, supra*, has been consistently followed and never overruled. *Stanley v. Schwalby*, 147 U.S. 508, 518 (1893); *Smith v. Reeves*, 178 U.S. 436, 448 (1900); *Ex Parte Young*, 209 U.S. 123, 183 (1908) (dissenting opinion). In fact the axiom of sovereign immunity was reemphasized as recently as *Parden v. Terminal Railroad of Alabama Docks Dept.*, 377 U.S. 184, 192 (1964).

If the California Court of Appeal's decision indeed rests on nothing more than the bald assertion that a sovereign state may be sued without her consent, no further argument is necessary to mandate reversal. *Hans v. Louisiana, supra; Cunningham v. Macon & B. R. Co., supra; Beers v. Arkansas, supra.* However, assuming *arguendo* that the opinion before the Court turned on the conclusion that Nevada had consented to suit in California, the question arises, from whence did such consent emanate.

II. THE STATES, BY ADOPTING THE CONSTITUTION, DID NOT CONSENT TO BE SUED BY INDIVIDUALS IN THE COURTS OF SISTER STATES.

This Court has expressly held that adoption of the Constitution does not constitute consent to be sued in the courts of sister states. *In Re New York*, 256 U.S. 490, 497 (1921); *Hans v. Louisiana, supra*, at 18. In fact this

Court has specifically held:

> "The right of individuals to sue a state, in either a federal or a state court cannot be derived from the Constitution or laws of the United States. It can come only from the consent of the state." *Palmer v. Ohio*, 248 U.S. 32, 34 (1918).

By ratifying the Constitution the States did not, then, consent to be sued in tort actions in the trial courts of sister states. Quite the contrary, by ratifying the Constitution the states specifically retained their sovereign immunity from suit in the courts of sister states.

III. THE CONSTITUTION, OTHER THAN AS SPECIFICALLY PROVIDED THEREIN, PROHIBITS SUITS AGAINST UNCONSENTING STATES.

The Constitution does not authorize individual citizens to call an unconsenting state to the trial bar of a sister state! The only expression with respect to a state being called into any court by individual citizens is found in the Eleventh Amendment and that expression is adamant support for the axiom that no state may be sued in the courts of sister states without her permission.

Nor may any serious argument be

advanced to assert that at the time the Constitution was adopted the States did not possess sovereign immunity from unconsenting suit. The statements of the founding fathers at the time of adoption clearly reveal that such immunity existed.

Hamilton, in response to the proposition that adoption might result in a state being sued in Federal Court wrote:

> "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union." *The Federalist*, No. 81, at 487 [emphasis in original].

James Madison stated:

> "It is not in the power of individuals to call any state into court." *Elliott's Debates*, p.533.

John Marshall reacted even stronger to the supposition that an individual could bring suit against an unconsenting State by pronouncing:

> "It is not rational to suppose that the sovereign power should be dragged before a court." *Elliott's Debates*, p.555.

Indeed the Court in *Hans v. Louisiana, supra*, at 16, observed that at the time of adoption:

> "The suability of a state, without its consent was a thing unknown to the law. This has been so often laid down and acknowledged by courts and jurists that it is hardly necessary to be formally asserted.
>
> * * *
>
> No sovereign state is liable to be sued without her consent."

The right to be immune from unconsented suit thus clearly existed at the time the union was formed.

The Tenth Amendment to the United States Constitution provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In addition to constituting an unequivocal expression that the States

retained all powers not specifically surrendered, the Tenth Amendment is a limitation on the powers which may be exercised against the States. *Fry v. United States*, 421 U.S. 542, 547, n.7 (1975).

The power to be free from suit is a power reserved to the States and may be abrogated by a sister state only if the States are free to interact under the law of independent sovereign nations. This they may not do.

Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause, is normally viewed as the Constitutional provision for the enforcement of foreign judgments. However, the clause serves the additional and more important function of altering the status of the individual states as independent foreign sovereignties, thereby making each an intregal part of a single nation. *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948); *Order of United Commercial Travelers of America v. Wolfe*, 331 U.S. 586, 618 (1947); Such a basic alteration was accomplished by substituting a command in place of the principles of comity. *Estin v. Estin*, 334 U.S. 541, 545, 546, (1948).

By prohibiting the States from treating each other as independent nations, the Full Faith and Credit Clause constitutes a verbalization of the concept of federalism upon which our Nation is founded. As early as Mr. Justice Iredell's dissent in *Chisholm v.*

Georgia, 2 U.S. 419 (1793) it was acknowledged that under the Federal system, the principles applicable under the Law of Nations offer little if any assistance in ascertaining the relationship between states. In language fully applicable to this case, Mr. Justice Iredell stated:

> "[S]ince unquestionably the people of the United States had a right to form what kind of union, and upon what terms they pleased, without reference to any former examples. If upon a fair construction of the Constitution of the United States, the power contended really exists, it undoubtedly may be exercised, though it be a power of the first impression. If it does not exist, upon that authority, ten thousand examples of similar power would not warrant its assumption. *Chisholm v. Georgia, supra,* at 449 (dissenting opinion).

Similarly, if the power of an individual to call an unconsenting state into the courts of a sister state exists under our Federal system of government, then, it would be incumbent on this Court to sustain the opinion of the California Court of Appeal, though it be an opinion unique to the heretofore accepted

concept of relations between states.[1] However, as set forth above, the power of an individual to drag an unconsenting state before *any court* in this country simply does not exist.

IV. NEVADA DID NOT CONSENT TO SUIT BY PERFORMING GOVERNMENTAL ACTIVITIES IN CALIFORNIA.

A possible basis for the opinion of the California Court of Appeal, is that merely by allowing a state owned vehicle to be driven on California highways, Nevada consented to be sued in California tort actions. The California Supreme Court in the decision deemed controlling by the California Court of Appeal, *Hall v. University of Nevada, supra,* placed great reliance on the case of *Parden v. Terminal Railroad of Alabama State Docks Dept., supra.* Apparently the California Supreme Court felt that *Parden* was support for the proposition that States consent to suit when they enter the borders of sister states. Such reliance was entirely misplaced.

1/ The uniqueness of the California Supreme Court holding in *Hall v. University of Nevada, supra,* which was followed by the Court of Appeal below, has already been the subject of one informative law review. 63 Calif. L. Rev. 1144 (1975).

Parden held that when a state affirmatively chooses to enter a sphere over which the Constitution grants the Federal government regulatory authority, such state consents to suit pursuant to the granted regulatory authority. In the words of the Court:

> "It remains the law that a state may not be sued by an individual without its consent. Our conclusion is simply that Alabama, when it began operation of an interstate railroad approximately 20 years after the enactment of the FELA, necessarily consented to such suit as was authorized by that Act. By adopting and ratifying the Commerce Clause, the States empowered Congress to create such a right of action against interstate railroads; by enacting the FELA in the exercise of its power, Congress conditioned the right to operate a railroad in interstate commerce upon amenability to suit in federal court as provided by the Act; by thereafter operating a railroad in interstate Commerce, Alabama must be taken to have accepted that condition and thus to have consented to suit." *Parden, supra,* at 192.

The decision in *Parden* is entirely consistent with the doctrine that the

individual states are immune from suit except where there has been a waiver of such sovereignty in the Constitution.

Moreover, the holding of *Parden* is limited by the prohibition against exercising the power thus granted in a manner which operates to directly displace the states' right to structure integral operations in areas of traditional governmental functions or in a manner which would impair the states' ability to function effectively within the federal system. *National League of Cities v. Usery,* 426 U.S. 833 (1976). The thrust of the decision of the California Court of Appeal unquestionably displaces Nevada's right to structure the internal operation of her government by determining for Nevada if and when monies are to be appropriated to guard against judgments assessed against her treasury. In addition, the decision patently effects Nevada's ability to function within the Federal system by admonishing Nevada that necessary governmental interaction must be undertaken at Nevada's risk and subject to the whims of the California legislature and courts.

Does it suppose too much to assume that a logical extension of the California Court of Appeal's decision could result in Nevada being called to answer in California courts for activities which occurred entirely within Nevada but which, in the opinion of some California citizen, have an effect in California. After all, California's

"long arm" statute reaches those with sufficient contacts within California and, in the words of the California Supreme Court, echoed by the California Court of Appeal:

> "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities." *Hall v. University of Nevada, supra,* at 8 Cal.3rd p. 524; Opinion of the California Court of Appeal, Appendix to Petition for Writ of Certiorari, p. iv.

In light of recent decisions greatly expanding the jurisdiction of California courts over non-residents it is obviously not illogical to conclude that unless the opinion of the Court of Appeals is reversed, Nevada will soon be called to the California bar under the California "long arm statute".[2]

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[2] "Two recent California Supreme Court decisions highlight the extent by which California courts have drastically extended their jurisdiction. In *Bernard v. Harrah's Club,* 16 Cal.3rd. 313, 546, P.2d 719, 128 Cal.Rptr. 215 (1976) cert. denied 429 U.S. 859, the California Supreme Court held that Nevada tavern keepers

The California Courts reliance on *Parden v. Terminal Railroad, supra,* is thus erroneous. *Parden* stands for the proposition that where, by adopting the Constitution, the states have agreed to be subject to regulation with respect to particular activities, they impliedly consent to suit if they engage in such activities. The United States Constitution does not provide that States agree to subordinate themselves to sister states and to be subject to regulation by, or suit in, sister states.

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were subject to suit in California under California's judicially created dram shop doctrine when patrons served in Nevada were involved in accidents in California. The *Bernard* decision, which was founded on the premise that Harrah's advertised in California, was issued despite the fact that the Nevada Supreme Court in *Hamm v. Carson City Nugget,* 85 Nev. 99., 450 P.2d 358 (1969) had ruled that Nevada Tavern keepers were not subject to dram shop liability and the Nevada legislature had removed all criminal penalties on tavern keepers who served intoxicated patrons. In *Cornelison v. Chaney,* 16 Cal.3rd 143, 545 P.2d 264 (1976), the California Supreme Court ruled that a California trial court could exercise jurisdiction over an action arising out of a motor vehicle accident which occurred in Nevada on the theory that the defendant Nebraska resident routinely engaged in interstate commerce in

V. IF THE CALIFORNIA COURTS OBTAINED JURISDICTION PURSUANT TO NEVADA'S STATUTORY WAIVER, FULL FAITH AND CREDIT MUST BE GIVEN TO THE LIMITATION CONTAINED THEREIN.

The only conceivable manner by which the courts of California could have obtained jurisdiction is pursuant to Nevada's statutory waiver of immunity. When a State consents to suit, it may condition its consent on such modes and terms as it sees fit, *Great Northern Insurance Co., v. Read,* 322 U.S. 47 54, 55 (1944); *Beers v. Arkansas, supra,* p.529. Nevada exercised this right and limited its consent, first, to courts of competent jurisdiction and, second, to recovery of $25,000.00 per claimant.[3].

The conclusion that a state has waived immunity and consented to suit is not one which will be lightly inferred.

California and "the accident happened not far from the California border, while defendant was bound for this state."

3/ At the time of the accident NRS 41.035 limited damages to $25,000 per claimant. The Section was amended in 1977 to increase liability to $35,000 per claimant.

Edelman v. Jordan, 415 U.S. 651, 673 (1974); *Petty v. Tennessee-Missouri Bridge Comm'n.,* 359 U.S. 275, 276 (1959). Consent will only be inferred after scrutiny of the entire waiver scheme to ascertain what consent was intended. *Chandler v. Dix,* 194 U.S. 590 (1904). The requirement for clearly expressed intent is fully applicable in determining whether a State intended to limit its consent to any particular courts. *Kennecott Cooper Corp. v. State Tax Comm'n.,* 327 U.S. 573 577, 578 (1945); *Great Northern Insurance Co. v. Read, supra,* at 54.

The venue provisions with respect to suits against Nevada, as they existed at the time the cause of action arose,[4]. provided:

> "NRS 13.025(1) Except as provided in subsection 2, any action or proceeding

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4/ NRS 13.025 was subsequently repealed and the statutory waiver scheme amended to read: "NRS 41.031(2): An Action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state.

against the State of Nevada shall be brought in a court of competent jurisdiction in Ormsby County.

(2) Any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the injury occurred.

That such statutorily expressed consent to suit was not intended to extend beyond the courts of Nevada is patently apparent. However, even assuming *arguendo* that the California courts obtained jurisdiction as a result of California's waiver, the Full Faith and Credit Clause demands that Nevada's limitation on recovery be applied.

This Court has previously addressed the question of whether a court may disregard the limitations and conditions that were contained in the foreign law which enabled the assumption of jurisdiction. Speaking for the Court in *Slater v. Mexican National R.R. Co.*, 194 U.S. 120 (1904), Mr. Justice Holmes observed:

"It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the

foundation of his case, and yet to deny the defendant the benefit of whatever limitations on liability that law would impose." *Slater v. Mexican National R. R. Co., supra,* at 126.

Again speaking through Mr. Justice Holmes, the Court in *Davis v. Mills,* 194 U.S. 451 (1904) states:

"But, as the source of the obligation is the foreign law, the defendant, generally speaking, is entitled to the benefit of whatever conditions and limitations the foreign law creates." *Davis v. Mills, supra,* at 454.

In *Pearson v. Northeast Airlines, Inc.,* 307 F.2d 131 (2nd Cir. 1962), rehearing 309 F.2d 553, cert. denied 372 U.S. 912, the Second Circuit Court of Appeals was presented with a situation extremely analogous to the one now confronting the Court. In *Pearson* a domiciliary of the State of New York was killed in an accident in the State of Massachusetts. In the resulting wrongful death action the United States District Court sitting in New York refused to apply the $15,000.00 limitation on recovery contained in the Massachusetts wrongful death statute and instead applied New York's unlimited liability provisions. The Second Circuit Court of Appeals reversed, holding that the requirements of Full Faith and Credit mandated that the $15,000.00

limitation on liability contained in the Massachusetts wrongful death statute be applied. The basis for the decision was this Court's ruling in *Slater v. Mexican National R.R. Co., supra,* and *Davis v. Mills, supra.*

Slater v. Mexican National R.R. Co., supra and *Davis v. Mills, supra,* as followed in *Pearson v. Northeast Airlines Inc., supra,* are directly on point. Pursuant to such holdings Full Faith and Credit must be extended to the liability limitation contained in NRS 41.035(1) at the time of the accident.

CONCLUSION

The decision of the California Court of Appeal would have a devastating effect on the ability of the States to interact. States would be exposed to the potential of financial ruin each time it became necessary to send their officers or employees into sister states. Government officials could not attend planning or coordinating conferences nor even participate in interstate compact activities, nor could key officials or employees be trained at seminars or learning institutions in sister states without "unlocking" the treasury doors. Examples of necessary governmental activities which require interstate interaction are myriad. Indeed, a state could not send her attorneys into a sister state to defend litigation such as the present without the risk of ruinous financial exposure.

To avoid the risk of financial

embarrassment a state would be required to "wall" itself within its borders and forsake all external personal interaction with officials of sister states. Such a result would effectively return the States to the status of independent nations they "enjoyed" under the Articles of Confederation. This is the very evil which the Constitution was adopted to prevent.

The decision of the California Court of Appeals is a cancer, which, if not removed at the first opportunity, will devour the concept of Federalism on which our Union of States is founded. When the Constitution was adopted it was with the understanding that the independent States of the Confederation would thereby be molded into a Union of Sister States, each reserving the dignity and attributes of sovereignty not expressly granted to the Federal government. To paraphrase the Court in *Hans v. Louisana, supra,* 15, may we assume that the several states would have adopted the Constitution if it had contained a declaration that states agree to be subject to suits for monetary damages brought by individuals in the trial courts of sister states? The answer to such a supposition is self-evident.

Formation of the Union gave birth to a concept of Federalism unique to the known theories of government. The Articles of Confederation were cast away and the Bond of Sisterhood substituted in their place. The opinion of the California Court of Appeal, with its conclusion that the principles of comity should

once again rule, would leave the States free to exercise their whims and fancies in the treatment of their Sisters. Such a result is entirely incompatible with the principles of Federalism embodied in the Constitution and is, in fact, no more than a return to the Articles of Confederation.

Indeed, under the logic of the California court the Federal government would likewise be subject to tort actions based on California law when it engaged in activities on non-federal lands. The opinion of the California Court of Appeal should accordingly be reversed with directions to dismiss the action as against the State of Nevada and its agencies, or, in the alternative, to limit the judgment to the liability limit that was specified by NRS 41.035(1) at the time the accident occurred.

Dated this 14th day of July, 1978.

Respectfully submitted,

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